HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

W.P. NO.20106 OF 1994

Between:
Shaik Shajahan

.....Petitioner

AND

The Director of Sugars & Cane Commissioner,
A.P. Hyderabad and two others.

.....Respondents

::ORDER::

Counsel for the Petitioner : Sri M.Vijay Kumar

Counsel for Respondent Nos.1&3 : None

Counsel for Respondent No. 2 : Ms.C.Vasantha Bhanu for D.V.Sitarama Murthy

Dated 5/9/2006

This petition is directed against order dated 28.10.1994 passed by the Managing Director of Chodavaram Co-operative Sugars Limited (hereinafter described as 'the Company') rejecting the petitioner's prayer for being treated as Clerk Grade-III.

In the affidavit filed by him, the petitioner has averred that even though he is senior to respondent No.3 - P.V.Ramana Murthy in the cadre of Seasonal Clerk, the management of the Company arbitrarily fixed his seniority below respondent No.3 and, on that account, he has been deprived of his legitimate right to be considered for permanent absorption in the category of Clerk Grade-III. He has further averred that fixation of his seniority below respondent No.3 has resulted in violation of his fundamental right guaranteed under Articles 14 and 16 of the Constitution of India.

In the counter affidavit filed on behalf of the Company, an attempt has been made to suggest that the petitioner cannot invoke Articles 14 and 16 of the Constitution, but it has not been shown as to why he cannot do so. On merits, it has been averred that respondent No.3 was placed above the petitioner because he had worked for larger number of seasons as compared to the petitioner and there was break of one year in the seasonal engagement of the latter.

Sri Vijay Kumar, learned counsel for the petitioner very fairly stated that in view of the averments contained in the counter affidavit, which have not been controverted by his client by filing rejoinder affidavit, he is not in a position to support his client's claim for being treated senior to respondent No.3.

De hors the fair statement made by the learned counsel, I am convinced that the writ petition is not maintainable and is liable to be dismissed as such. It is trite to say that a petition filed under Article 226 of the Constitution for enforcing the fundamental rights embodied in Part III of the Constitution can be entertained only if it is established that the non-petitioner, against whom relief is sought, falls within the definition of 'State' under Article 12 of the Constitution. The question whether a company, corporation, society or institution falls within the definition of 'State' and is amenable to writ jurisdiction of the High Court under Article 226 of the Constitution has been considered by the Supreme Court in a large number of cases. In **Ramana Dayaram Shetty v. International Airport Authority of India**[1], the Supreme Court laid down the following tests for determining as to when a corporation can be treated as an instrumentality or agency of the State. These are:

"(*1*) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(*2*) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(*3*) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(*4*) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(*5*) If the functions of the corporation are of public

importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(*6*) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

I n **Ajay Hasia v. Khalid Mujib**[2], the Supreme Court reiterated the tests laid down in **Ramana Dayaram Shetty v. International Airport Authority of India** (supra).

In **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**[3], a larger Bench of the Supreme Court, after analyzing the ratio of earlier judgments, laid down the following proposition:

> "The picture that ultimately emerges is that the tests formulated in ***Ajay Hasia*** are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

In the present case, the petitioner has neither pleaded nor any evidence has been produced before the Court to show that the Company is a creature of a statute or that it is under financial or administrative control of the State or is discharging a governmental function or some public law obligation. Therefore, it is not possible to entertain his prayer for issue of a mandamus to the Company to

fix his seniority over respondent No.3 by invoking Articles 14 and 16 of the Constitution of India.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

5th September, 2006.

msv.

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[1] (1979) 3 SCC 489

[2] (1981) 1 SCC 722

[3] (2002) 5 SCC 111